

authorizes this basis for excluding aliens from employment. 29 C.F.R. §1606.1(d).

The second employment implication is not provided for in the EEOC Guideline. That is, Filipinos employed by Government contractors in the Pacific, and by the Government itself, are traditionally paid a lower rate than U.S. citizen employees. This practice stems from the fundamental Government policy of paying alien employees in accordance with prevailing rates in the local area. Thus, the Foreign Service Act of 1946, as amended by Public Law 86-723, Sept. 8, 1960, provides:

Compensation Plans for Alien Employees

(a) The Secretary shall, in accordance with such regulations as he may prescribe, establish compensation plans for alien employees of the Service: Provided, that such compensation plans shall be based upon prevailing wage rates and compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest.

(b) For the purpose of performing functions abroad, other Government agencies are authorized to administer alien employee programs in accordance with the applicable provisions of this chapter. Aug. 13, 1946, c. 957, Title IV, §444, 60 Stat. 1006; Sept. 8, 1960, Pub. L. 86-723, §6, 74 Stat. 831.

22 U.S.C. §889.

The legislative purpose to relate the compensation of alien employees to that prevailing in their home area was intended to have uniform application throughout the Government:

This section is a clarification and simplification of section 444 of the act that deals with compensa-

tion for alien employees hired overseas. The new language will permit the establishment of wage and salary schedules for such employees to be based upon local prevailing pay practices for corresponding types of positions in the locality.

The new paragraph (b) confers authority upon other Government agencies to utilize the provisions of this act in their employment of alien personnel abroad. This will enable all Federal agencies employing such personnel to operate as a single employer by providing uniform employment conditions for all alien employees of the Government in a particular foreign labor market area who are working under similar conditions.

1960 U.S. Code, Cong. and Adm. News 3407, at 3410.

The Agreement governing FMC's employment of Filipinos on Wake Island implements this goal of uniformity. It applies alike to Filipinos working for the Government and for contractors with the Government. Whether they work for the United States directly or indirectly, these Filipino employees are guaranteed the same compensation. Within the Republic of the Philippines the wages and fringe benefits relate to those paid domestically, as first specified in an exchange of notes which were entered into force on May 16, 1947. TIAS 3646; 7 UST 2539. Filipinos employed outside the Republic receive the same basic compensation plus an overseas differential. In this respect, the Agreement continued in 1968 the practice established by the exchange of notes in 1947.

The compensation of Filipinos employed by FMC on Wake Island, and of those employed elsewhere in the Pacific by other Government contractors, is thus a matter of long tradition and successive government-

to-government agreement. It reflects, moreover, a Congressional purpose to harmonize the compensation of alien employees overseas.

But most important, it entails a number of legal and policy considerations that do not remotely resemble those concerned with the refusal of respondent to hire petitioner in San Antonio. These considerations would not suggest a different conclusion in the Pacific if the Court should find alienage discrimination not violative of Title VII when visited upon persons lawfully admitted for permanent residence in the United States. Should the Court find to the contrary, we respectfully request that decision on the status of Philippine nationals employed in the Pacific be reserved for a future case, if any, when the applicable legal and policy considerations can be adequately presented to the Court.

Respectfully submitted,

JOHN B. MILLIKEN
PARKER, MILLIKEN,
KOHLMEIER, CLARK &
O'HARA
606 South Olive Street
Los Angeles, California
90014

STEPHEN N. SHULMAN
CADWALADER, WICKERSHAM
& TAFT
1000 Connecticut Avenue,
N.W.
Washington, D. C. 20036
(202) 659-4700

Attorneys for
Amicus Curiae